

## National Guard Report

### A. Role of National Guard

In addition to the Reserves of the four Services, the Army and the Air Force are supported by a substantial National Guard organization. The National Guard is organized into units allocated among the States. \* / These units are an important part of our overall organization for national defense. In past wars and periods of crisis, the Guard has played an important role.

Unlike the Reserve components of the Services, which are under purely federal control, the Guard has a dual status. In many respects, the rules by which it is governed are provided by Congress under its broad Constitutional power over the Guard, and by an exercise of broad rule-making power delegated by Congress to the President. Day-to-day control and supervision, however, are a function of State organizations headed by the State adjutants general, who report to the State governor. Individual Guardsmen, too, have a dual status; they take a dual oath, and, in addition to their State status, they must be federally recognized if they are to receive the pay provided by the federal government for participation in the program.

Overall guidance of the Guard program within the Defense Department is provided by the National Guard Bureau, headed by a

\* / The District of Columbia and Puerto Rico both have Guard units, but since these are federal enclaves, not subject to State law, any problems of discrimination there can be dealt with as if the Guard units were units in the Army and Air Force Reserve.

military chief who reports, through the chain of command, to both the Secretary of the Army and the Secretary of the Air Force.

Federal funds provide all the drill pay for individual Guard members, support the operation and maintenance of equipment and activities, and provide 75% of the funds for new construction of armories and 100% of the funds for construction of other facilities for use by the Guard. In addition to providing funds, the federal government makes all major military equipment, tanks, planes, trucks, etc., available to the Guard. The States normally provide the land upon which armories are constructed, pay 25% of the cost of armory construction, and pay the cost of maintenance of the armory facilities. Although financial support for the Guard is overwhelmingly federal, it is estimated that the States provided \$ \_\_\_\_\_ for the Guard program during fiscal year 1962.

The magnitude of the Guard program, for both the Army National Guard and the Air National Guard, is suggested by the following tables showing the strength and the amount of federal funds appropriated or available to each organization in fiscal year 1962.

(TABLES here)

Membership in the Guard is voluntary on the part of the individual, and thousands of Guard members would, but for their affiliation with the Guard, have no obligation to perform military duty as a part of any organized unit. In addition to this group, however, there are a significant number of Guardsmen who joined the Guard as a means of fulfilling possible military service obligations under the Universal Military Training and Service Act. In the past, the Guard has offered a number of programs involving a combination of a short period of active duty with subsequent training and service in the Guard. The young men participating in these programs on a satisfactory basis for a specified period of time are not drafted or required to participate in other regular or reserve programs.\*/ The various Guard programs therefore complement the programs available under the draft and under various other reserve and regular programs by providing additional methods for young men to enter military service and discharge their obligations.

From the foregoing discussion, it is apparent that the Guard is an inextricable part of the nation's defense system: it provides important

\*/ This exemption or deferment is achieved in some cases by the provisions of the UMT&S Act, and in others as a result of Selective Service regulations promulgated in accordance with that Act.

strength in Reserve, it receives substantial federal support and attention, and its programs for military service for young men are part of the fabric of military manpower planning.

## **B. Equality of Opportunity in the National Guard**

At the present time there is no formal federal requirement comparable to Executive Order 9831 which was promulgated with respect to the active forces and the Reserves, compelling color-blind administration of the National Guard. As a consequence, the degree to which equality of opportunity exists varies from State to State, and even from community to community.

In some States, as a result of constitutional or statutory provisions, discriminatory policies with respect to the Guard are forbidden. This is the case, for example, in California and New Jersey. In others, although there are no such formal prohibitions against discrimination, there appears to be full participation by Negro personnel, officer and enlisted, in the programs of the Guard.

It is reported that no State currently has a formal constitutional, statutory or regulatory provision which openly forbids or restricts Negro participation in the National Guard. <sup>\*</sup>/ Despite the absence of formal controls, in a number of States there are no Negro members of the National Guard. The following table lists the States without Negro members, indicates the size of the Army and Air Guard in the State, and shows the percentage of Negro population within the State.

(TABLE here)

<sup>\*</sup>/ It was reported that the last such existing statutory provision was repealed by the North Carolina General Assembly on April 2, 1963.

It is apparent from the preceding table that there are <sup>9</sup> States \* / with both significant numbers of Guardsmen and a substantial Negro population in which no Negro serves with the Guard. Whether the forces which achieve this result are formal or informal, political or social, it is apparent that in these States there is effective exclusion of Negroes from the National Guard. In those States with low Negro populations, the conclusions are less clear.

The complete absence of Negroes from State National Guard organizations is a most disturbing pattern to be found in the Guard, but there are others that deserve mention. In a number of States which had some Negro enlisted members of the Guard, there were no Negro officers. While the significance of this officer pattern varies with the size of the Guard, the percentage of Negro population and the extent of Negro participation in the enlisted ranks, the absence of officers contributes to an impression of inequality. The States reporting only enlisted Negro members include:

Oregon  
New Mexico  
Nebraska  
Delaware

Rhode Island  
Vermont  
Texas  
Wyoming

Nevada  
Maine (ck)  
Kentucky (ck)

\* / These States are marked with an asterisk in the table.

Three States, while reporting a small number of Negroes in the Army National Guard, had no Negroes in the Air National Guard.\*/ One State, Nevada, had all its Negro National Guard members in a single Guard unit, while another, Missouri, had all of its Negro members in two all-Negro units.

A final pattern in the Guard is much like that found in the Reserves: the existence of a number of individual units without Negro members, located in States in which Negroes participate to some extent in the Guard. As the discussion of the Reserves pointed out, such all-white units are sometimes explicable by the operation of one or more of a number of variables -- smallness of unit size, small Negro population in area from which the unit draws members, lack of Negro interest in certain units, unavailability of Negro personnel with special skills required in certain types of units -- and no prima facie case of discrimination can be established without an analysis of all these factors for the units involved. On the other hand, there are sometimes no Negroes in units composed of several hundred men, units of a type not requiring a concentration of those with special skills located in areas with a reasonably large Negro population. In such cases, some type of exclusionary policy is strongly suggested, and further investigation of the background of this statistically improbable pattern is indicated.

\*/ These States were Missouri, Iowa and Wyoming.

The presence of these variables discussed above, coupled with the local day-to-day control of Guard units and their procedures for attracting personnel, naturally renders any investigation of problems of inequality in the Guard more difficult than for the active forces.

Assumptions based on the existence of a homogeneous group of members and on the validity of random sampling techniques cannot be as freely made. Whatever factors have contributed to the present pattern of Negro participation, it is clear that these patterns in number of cases are compelling evidence that discriminatory forces have been at work. In other cases, the figures available, while suggestive of discrimination, require amplification and further study.

Regardless of these difficulties, the questions suggested by the present status of Negro participation in Guard activities in some States cannot be lightly dismissed. There are a number of reasons why equality of opportunity in the National Guard must be a national objective. One is that the entire National Guard operation represents an exercise of Federal and State power on an impressive scale; State governments are constitutionally disabled from depriving Negroes of equal opportunity in activities subject to State control, and the firm policy of the Federal government in every area subject to its control has been one of equal treatment for all people, regardless of race. Deprivations of equal treatment in

the Guard, though perhaps of less immediate concern to Negro citizens faced with other forms of inequality of greater impact, are no less inexcusable or intolerable.

Another persuasive reason derives from the Guard's role under the Universal Military Training and Service Act. That Act provides a number of means for fulfilling the military obligations which are imposed on the young men of the nation. Several of these means are provided through the structure of the Army and Air Force National Guard. In view of the importance of these programs to the young men affected by them, there should be no program from which any American is excluded because of the color of his skin.

A final reason for compelling equality of treatment is suggested by the relationship between the National Guard and the active military forces of the Army and the Air Force. The Guard units are subject to being called into active Federal service in times of war or crisis. As a consequence, there has been for some time a requirement that Guard units conform to the organization of the regular components. While it is true that the Guard is now organized into companies, battalions, divisions, and other units which correspond to their regular counterparts, the exclusion of Negroes from these Guard units represents a deviation from the organization of regular components. If the Guard is again

called to federal service, there will be a need to bring its units up to full strength by assigning additional personnel. After the Guard has entered federal service, such assignments should be made just as assignments are made in other Army and Air Force units -- without regard to race. The situation of the first Negro to be assigned to an all-white unit is not an enviable one. It seems far better to conform the organization of the Guard to that of the regular components prior to times of crisis, when there is time for the adjustments of attitude that will inevitably be involved. This will permit a future assignment policy in times of crisis which is free from the restraints of racial embarrassments.

The steps already being taken to alter the patterns of inequality in the Guard, though limited in scope and lacking promise of immediate results, should, of course, be continued and strengthened. It is appropriate to consider what other steps, promising greater achievement, are available for dealing with the problem.

A necessary preliminary to any positive program for improving equality of opportunity in the Guard is a determination that the executive power of the federal government is to be mobilized in a concerted effort to achieve equality. If this determination is made, the groundwork for any further action would be an Executive Order issued pursuant to the President's power <sup>\*/</sup> to make all necessary rules and regulations for governing the Guard. Such an order would recite the statutory requirement that the Guard organization conform to that of the regular components, and, in terms equivalent to those of Executive Order 9981 which prescribed equality of opportunity for the other elements of the armed forces, would require that membership in the Guard, as well as all other aspects of Guard participation, be without regard to race, color, creed or national origin.

It would be naive to assume, in view of the recent history of recalcitrance in the face of legally imposed requirements for equal treatment, that the issuance of such an executive order alone will command compliance in all cases. Certainly the executive order,

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<sup>\*/</sup> Under 32 U. S. C. § 110.

without more, might provide the stimulus for improved equality of opportunity in Guard units located in areas with less entrenched feelings. In some cases, however, additional steps will be necessary.

One avenue for dealing with noncompliant organizations exists in the courts. Suits, instituted by the federal government to compel the admission of qualified Negro applicants, will provide a forum for determining any legal issues which arise from the dual status of the Guard as an instrumentality of both the federal and state governments. Similar suits may arise in other contexts, presenting other issues for determination by the courts. Litigation has the advantage both of definitive determination of disputed issues and of resolution of conflicts in a manner now familiar in the civil rights area.

Litigation is, of course, only one of a number of alternative approaches. The President is invested with power to withhold, in whole or in part, the funds of any Guard unit which has not complied with federal requirements concerning its organization or administration. Failure to adopt equal-opportunity practices would violate both the statutory requirement that Guard units conform to the organization of equivalent regular units, and would at the same time violate the provisions of the executive order requiring equal opportunity in the Guard.

Another alternative, akin in nature to the withholding of funds, is the withdrawal of "Federal recognition" from non-complying Guard units. Under the present statutory scheme governing the Guard, a unit must be recognized federally before it can receive any federal funds and before its members can qualify for a federal status in addition to their state status.

If recognition is withheld or withdrawn, the unit no longer is a part of the federally supported Guard. The unit loses its operational funds, the members no longer receive pay for attending drills, and, perhaps more significant, those members who have not fulfilled their required duty under the Uniform Military Training and Service Act are compelled to serve in the reserves to complete the balance of their obligated period. In addition, of course, federal equipment issued to the unit would have to be withdrawn.

All these steps are available. Their use would depend upon individual situations. While litigation may seem the wisest course in one case, partial or complete withholding of funds may be more appropriate in another. In other instances, informal negotiations with governors may be sufficiently successful that additional steps are not necessary to implement the policy of the executive order.

Influencing the choice between alternatives will be considerations of military preparedness. While the use of military arguments as a cloak to justify a policy of inaction could not be permitted, valid and compelling military considerations, / carefully and fully justified to Defense Department officials, might dictate the order in which various units are compelled to comply with the Executive Order, and would certainly influence the chronology of compelled compliance. Such considerations might, for example, suggest that plans be made for realignment of unit assignments to various states in the event that some units' effectiveness is destroyed by their opposition to policies of equal opportunity.

### E. Recommendations for Action

The Committee has considered the available material concerning equality of opportunity in the Guard, the alternatives available for improving equality of opportunity and the impact of these alternatives on the Guard in the states affected. It has also considered the measures adopted to deal with the problem.

It is the opinion of the Committee that the compelling reasons for requiring equality of opportunity in the Guard, discussed above, demand more positive action than has heretofore been taken. The Guard has been, and will continue to be, an important constituent element of the armed forces. It cannot be permitted to lag behind the regular and reserve components in providing for all citizens that equality of opportunity which the Constitution commands and which national policy firmly supports.

The Committee therefore recommends that the President issue an executive order requiring that all elements of the National Guard, in all aspects of their operations, integrate completely and provide equality of treatment and opportunity without regard to race which today characterizes the operations of the regular components. The executive order should call upon all federal officials concerned with the maintenance of National Guard strength to use their good offices in seeking an end to practiced inequality of all forms.

should be given to the alternative steps to be taken if compliance or reasonable progress toward compliance does not follow in due course. The Committee does not recommend any of the alternatives discussed above to the exclusion of any other as appropriate for any specific situation.

It does, however, feel that all of them are appropriate means for insuring compliance, with the choice of means to be dictated by the circumstances of each case.

In applying the various alternative methods, a timetable should be worked out for each State, taking into consideration the peculiar problems of that state and the role of the state's units in defense planning. Technical assistance from the Defense Department and the Services involved should be made available to the Guard organizations affected.

Essential to the process of determining appropriate courses of action is the availability of information concerning equality of opportunity in the Guard. In order that such information may be available on a continuing basis, the Committee recommends that periodic reports of the racial composition of Guard units, and of the applicants for membership therein, be required through appropriate channels. In addition, inquiry concerning equality of opportunity should be made a part of the periodic inspections of Guard units conducted by regular component personnel.

As important as any other single step will be an emphatic direction from the President, circulated down through the chain of command

of those elements of the federal defense establishment concerned with the Guard, requiring serious efforts to obtain compliance with the letter and spirit of the executive order. Difficulties are to be expected in implementing a program of this kind, and if such difficulties are made the excuse for arresting an active program, little in the way of satisfactory results can be expected. The program may proceed with some restraint, but it must proceed. Those responsible for its progress should understand that their performance will be evaluated and that excuses for unsatisfactory performance will not be routinely accepted.

It is especially important that the National Guard Bureau, as the agency at the national level most closely involved in the affairs of the Guard, be impressed with the overriding federal interest in improved equality in the Guard and with the necessity that this federal interest take priority over the inclinations of various state and local Guard organizations.

In the past programs for improving equality of treatment and opportunity for Negroes in the active forces have been instituted amid predictions that the new policies will destroy morale and military effectiveness. That such pessimism has never proved well-founded in the past should reassure those who are hesitant to embark on similar programs affecting the Guard.

*Memorandum*

TO : Burke Marshall  
Assistant Attorney General  
Civil Rights Division

DATE: JUL 29 1963  
7-29-63

FROM : Gordon A. Martin, Jr.  
*GAM* Attorney  
Civil Rights Division

GAM, Jr.:swb

SUBJECT: Proposed Gesell Report on the National Guard

I talked this morning with Lt. Robert Jordan of the President's Committee on Equal Opportunity in the Armed Forces who told me that the ten states with substantial Negro population and no Negro members in the National Guard are:

Alabama  
Arkansas  
Florida  
Georgia  
Louisiana  
Mississippi  
North Carolina  
South Carolina  
Tennessee  
Virginia

June 21, 1963

Dear Mr. Chairman:

I appreciate the intensive and constructive effort that you and the other members of the Committee on Equal Opportunity in the Armed Forces have given to one of the Nation's most serious problems. As your initial report suggests, the Armed Forces has made significant progress in eliminating discrimination among those serving in the defense of the Nation. Your inquiry indicates, however, that much remains to be done, especially in eliminating practices that cause inconvenience and embarrassment to servicemen and their families in communities adjoining military bases.

Your recommendations should have the immediate attention of the Department of Defense and I have asked the Secretary of Defense to report to me on your recommendations within thirty days. Enclosed for your information is a copy of my letter to the Secretary.

The timeliness of your report is, of course, obvious, and I hope you will convey to the other members of the Committee my appreciation for the constructive report that has been prepared. I am confident that the Committee will bring to its remaining tasks the same high degree of effort, competence and understanding that characterizes your initial report.

Sincerely,

S/ John F. Kennedy

Honorable Gerhard A. Gesell  
Chairman  
The President's Committee on  
Equal Opportunity in the Armed Forces

THE WHITE HOUSE  
WASHINGTON

June 21, 1963

Dear Mr. Secretary:

Because of my concern that there be full equality of treatment and opportunity for all military personnel, regardless of race or color, I appointed a Committee to study the matter in June of 1962. An initial report of my Committee on Equal Opportunity in the Armed Forces is transmitted with this letter for your personal attention and action.

We have come a long way in the 15 years since President Truman ordered the desegregation of the Armed Forces. The military services lead almost every other segment of our society in establishing equality of opportunity for all Americans. Yet a great deal remains to be done.

As the report emphasizes, a serious morale problem is created for Negro military personnel when various forms of segregation and discrimination exist in communities neighboring military bases. Discriminatory practices are morally wrong wherever they occur -- they are especially inequitable and iniquitous when they inconvenience and embarrass those serving in the Armed Services and their families. Responsible citizens of all races in these communities should work together to open up public accommodations and housing for Negro military personnel and their dependents. This effort is required by the interests of our national defense, national policy and basic considerations of human decency.

It is encouraging to note that the continuing effort over the last fifteen years to provide equality of treatment and opportunity for all military personnel on base is obviously having far-reaching and satisfactory results. The remaining problems outlined by the Committee pertaining to on-base conditions, of course, must be remedied. All policies, procedures and conditions under which men and women serve must be free of considerations of race or color.

The Committee's recommendations regarding both off-base and on-base conditions merit your prompt attention and certainly are in the spirit that I believe should characterize our approach to this matter. I would hope your review and report on the recommendations could be completed within 30 days.

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I realize that I am asking the military community to take a leadership role, but I believe that this is proper. The Armed Services will, I am confident, be equal to the task. In this sense, as in so many others, the U.S. Infantry motto "Follow Me" is an appropriate guide for action.

Sincerely,

s/ John F. Kennedy

Honorable Robert S. McNamara  
Secretary of Defense